

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7191 of 2004
With
CIVIL APPLICATION No. 12663 of 2005
In SPECIAL CIVIL APPLICATION No. 7191 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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ARVINDBHAI GIORDHARBHAI PATEL & 9 - Petitioner(s)
Versus
STATE OF GUJARAT & 27 - Respondent(s)

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Appearance :

MR DC DAVE for Petitioner(s) : 1 - 10.
GOVERNMENT PLEADER for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 1,
MR RS SANJANWALA for Respondent(s) : 1,3 - 6.
RULE NOT RECD BACK for Respondent(s) : 2,7 - 28.
MR AR MAJMUDAR for Respondent(s) : 2,
MR JAL SOLI UNWALA for Respondent(s) : 7 - 28.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 28/12/2005

ORAL JUDGMENT

1. The present petition is initially filed by ten petitioners. What is under challenge is an order dated 17.10.2003 passed by the District Development Officer as upheld by the Additional Secretary (Appeals), Revenue Department, Government of Gujarat, by his order dated 24.05.2000. Learned advocate Shri Dave for the petitioners has placed on record three individual communications received by him from petitioner Nos. 6,9 and 10 indicating that these petitioners do not wish to pursue the petition any longer. They have been, at the request of learned advocate for the petitioners, deleted from the cause title of the petition.

2. Broadly stated facts of the present petition are as follows.

2.1 Respondent nos.3 to 6 herein are Developers of the plot bearing Survey No.49/1 admeasuring 18378 sq.mtrs., situated at Nandelal Village, Taluka District Bharuch. Respondent Nos.3 to 6 were original owners of the plots in question. After obtaining N.A., use permission from the Competent Authority, respondent Nos.3 to 6, desirous of selling sub-plots created out of the entire plot bearing Survey No.49/1, got plan passed by the authorities. Sub-plottings of the original land

necessarily included providing for internal road as well as area to be earmarked as common open plots. Thus, having got plan passed by the competent authority for sub-plottings, respondent Nos.3 to 6 sold several open plots to various individuals. It appears that part of the plot was sold to the Cooperative Society called "Ramnagar Cooperative Housing Society". Some 45 plots were sold to individual plot owners. It appears that out of the total area of the plot in question, respondent Nos.3 to 6 still continuing enjoying ownership and possession of approximately 9,000 sq.mtrs., of land and the remaining area of the land belongs to the Cooperative Housing Society as well as to the sub-plot holders, which would also include an area occupied by the internal road and the common open plot. As per the plan sanctioned by the Competent Authority, respondent Nos.3 to 6 had provided for three common open plots, one of them admeasuring 2100 sq.mtrs., whereas other two plots were of different sizes. It is this common open plot admeasuring about 2100 sq.mtrs., which is the centre of the controversy between the parties.

2.2 The petitioners herein are owners of the sub-plots plotted out by respondent Nos.3 to 6 from the said Survey No.49/1. It appears that most of the petitioners

had purchased these plots not directly from respondent Nos.3 to 6 but from the purchasers of such plots from respondent Nos.3 to 6. The petitioners, therefore, purchased the plots in question on resale and not directly from respondent Nos.3 to 6.

2.3 It appears that on account of certain changes in the requirement of leaving open land from the centre point of the highway, respondent Nos.3 to 6 wished to make certain changes in the plan which was earlier sanctioned by the Competent Authority. Simultaneously, there appears to be some demand also from large number of plot holders to relocate and shift the common open plot, which was of the size of 2100 sq.mtrs., as noted earlier. With these two purposes in mind, respondent Nos.3 to 6 applied to the District Development Officer for passing revised plan. In the revised plan, primarily two things happened. Firstly, common open plot of 2100 sq.mtrs., was shifted. It is the case of respondent Nos.3 to 6 that the plot was so shifted at the request of majority of the plot holders since they wanted common plot to be at the centre of the land rather than be at the boundary. Secondly, there was certain internal roads which were either shifted or modified. Petitioners are aggrieved by these two changes which respondent Nos.3 to 6 wanted to

make.

2.4 District Development Officer, after verifying the details submitted by respondent Nos.3 to 6, by his order dated 17.10.2003 approved the revised plan on certain terms and conditions.

2.5 Petitioners herein, contending that they were necessary party and ought to have been heard by the District Development Officer before such revision in the plan could have been granted, filed Revision Application before the State Government under Section 211 of the Bombay Land Revenue Code. Additional Secretary (Appeals), however, by his order dated 24.05.2004, was pleased to reject Revision Application filed by the petitioners. Petitioners have, therefore, filed the present petition and challenged the order passed by the District Development Officer as upheld by the Additional Secretary.

3. It is the case of the petitioners that the petitioners had purchased the plots in question with the existing plan in mind that in front of their plots, there was a road followed by the disputed common open plot. By virtue of the implementation of the revised plan as

passed by the District Development Officer, the roads as well as common open plot would no longer be situated in front of the plots held by the petitioners. This would cause a great harm, injury and prejudice to the petitioners. It is, therefore, the case of the petitioners that they ought to have been heard before the District Development Officer could have allowed the application of respondent Nos.3 to 6 for revision in the plan.

3.1 It is also the case of the petitioners that the Additional Secretary has not assigned any reasons for rejection of the revision application. The order is, therefore, non-speaking order.

3.2 It is contended that once the plans were passed by the authority, common open plot mentioned therein would cease to be of the ownership of the erstwhile owners and joint ownership thereof would vest in all the plot owners. It was, therefore, not open for respondent Nos.3 to 6 to shift the common open plot or to deal with the same in any manner.

4. It is also the case of the petitioners that respondent Nos.3 to 6 have not provided for any

alternative open plot also, though it is so represented before the District Development Officer. It is their case that now the area which is sought to be provided as common open plot contains the existing construction and the open plot to such extent got diminished. It is additionally contended that from out of the remaining open plot, certain portions have been sold off by respondent Nos.3 to 6 which would make revised plan fundamentally vulnerable since requirement of providing for keeping as common open plot will not be met with.

5. On the other-hand, Mr.Rashesh Sanjanwala, learned advocate appearing for respondent Nos.3 to 6 resisted the petition. He submitted that respondent Nos.3 to 6 continued to be the owners of substantial portion of Survey No.49/1. That remaining plot has been sold to the Co-operative Housing Society and some individual plot owners. He submitted that the District Development Officer, after examining all aspects of the matter, finding that the revised development plan fulfills all the Rules and Regulations, was pleased to approve the same.

5.1 It is contended that shifting of the common plot is being opposed only by remaining 6 to 7 petitioners.

Rest of the plot holders and the Cooperative Housing Society have never raised any objection to shifting of the common plot. He submitted that, in fact, majority of plot holders had desire that common plot be shifted so as to bring it in the centre of the plot instead of being on one side.

5.2 It was additionally contended that the petitioners herein are not original purchasers of the plots from respondent Nos.3 to 6 and they have acquired their plots through resale. He submitted that there was no promise hold out by respondent Nos.3 to 6 to the petitioners that there would be no modification of the plan. In any case, it is the contention of the learned advocate that once the plans are passed and some plots sold in pursuance thereof, it does not mean that plot holders are precluded from applying for the revised plan for all times to come.

5.3 He contended that the petitioners are opposing to the revised plan only for causing harassment to respondent Nos.3 to 6 and that there is no real prejudice caused to them.

5.4 It was contended that when the full material is

placed before this Court, the question of District Development Officer not hearing the petitioners or the Additional Secretary, in his order not individually dealing with each contentions raised by the parties, need not result into remanding the proceedings which would eventually result into further delay and prolonging of the litigation.

5.5 It was also contended that the alleged construction in the common plot now earmarked by respondent Nos.3 to 6 was only for the purpose of providing the building for being used as common amenity and if the members do not wish that such construction be retained there, respondent Nos.3 to 6 undertake to remove the same.

5.6 It was also contended that any portion of any of the plots has been sold by respondent Nos.3 to 6 that the same is disputed question of fact which cannot be gone into in a writ petition. In any case, even if inquiring into this factual aspect is left to the District Development Officer and respondent Nos.3 to 6 would have no objection and would carry out corrective or compensatory measures if it is found that out of any of the common plots, any portion is sold out.

6. Having thus noted the factual aspects leading to the petition and submissions made on behalf of the rival parties, it would appear that the central question is, whether respondent Nos.3 to 6 had a legal right to apply for passing of revised plan for the land bearing Survey No.49/1 and whether the District Development Officer was justified in granting such a request.

7. As noted earlier, out of the entire plot admeasuring 18378 sq.mtrs., nearly half still belongs to respondent Nos.3 to 6 and remaining area has been sold by respondent Nos.3 to 6 in favour of the Cooperative Housing Society and 45 individual plot holders. Out of these 45 plot owners, about 6 or 7 have maintained their challenge against the proposal to modify the plan. Majority of the plot holders, in fact, vociferously demand that open plot be shifted. Learned advocate for the petitioners also did not seriously dispute that within the legal parameters, respondent Nos.3 to 6 did have limited right to apply for modification of the plan, but however, he submitted that such modification cannot be so the prejudice of the petitioners and cannot be considered without considering their objections. It would thus, appear that once the plans are passed by the

Competent Authority, the same do not have to be adhered to strictly for all times to come. The situation may demand that subsequently plans may have to be modified and such modification can be considered by the authority if found to be in accordance with law. Respondent Nos.3 to 6 had submitted plans to the District Development Officer for shifting of open plot and had also suggested modifications in the internal road. When respondent Nos. 3 to 6 are dominant owners of Survey No.49/1, when the Cooperative Housing Society which purchased the portion of the plot from respondent Nos.3 to 6 and majority of the individual plot holders do not object to such shifting, it leaves the petitioners in hopeless minority insofar as their objections are concerned. It is not the case of the petitioners that by shifting common open plot, the total area available as open plot for the use and enjoyment of all the plot holders gets in any way reduced. If the common plot is shifted at the demand of the majority plot holders without there being any direct effect to the petitioners, in the facts of the present case, I do not find that the petitioners could have validly objected to the same. No case has been put forth before this Court to suggest that the petitioners have purchased the plots at a premium on account of its situational advantages. In fact, suggestion of the

learned advocate for respondent Nos.3 to 6 that almost all the petitioners are purchasers of the plots on resale has not been seriously disputed. No case, therefore, has been set up to suggest that the promise was hold out by respondent Nos.3 to 6 in favour of the petitioners that the petitioners, if purchase the plots in question, would for all times to come enjoy the open plot at the then existing site. In any case such complex, disputed questions of fact cannot be entertained in the present petition. Therefore, for want of any material being placed before the Court and in view of the fact that I find that such questions would in any case, be highly disputed questions of fact, it is not possible to uphold the contentions of the petitioners.

7.1 The question, therefore, remains is, whether respondent Nos.3 to 6 were within their legal right to request for passing of the revised plan and whether District Development Officer exercised the powers in accordance with law. In this regard, as noted earlier, no facts has been put up by the petitioners to suggest that on account of change of plans, the area of common plot available to the plot holders got reduced in any manner. In that view of the matter and in view of the fact that the District Development Officer, after examining the

revised plan, permitted the same as prayed for, I find that no illegality has been pointed out. It is true that the petitioners were not heard by the District Development Officer. It may, even, be partially correct that the Additional Secretary has not given detailed reasons in his impugned order while dealing with the contentions raised by both the sides. In the facts of the present case, however, these factors do not convince me to strike down the order under challenge or to provide for remand of the proceedings. I have examined the contentions raised on behalf of the petitioners. Remand or calling for fresh application would only lead to further protraction of the legal issues and would be in the interest of neither side.

8. Two sides issues, however, need be addressed. Firstly, the contention of the petitioners has been that there is some construction in the proposed open plot under the revised plan. Respondent Nos.3 to 6 have shown willingness to remove such construction. After ascertaining wish from the plot holders, respondent Nos. 3 to 6 shall either forthwith, remove such construction or make the same available for common use. In any case, it will be ensured that no third party will claim ownership or possession thereof.

8.1 Insofar as the question of portion of common plot being sold by respondent Nos.3 to 6 is concerned, for want of sufficient material in the present petition and in view of the fact that such contention is raised for the first time before this Court, it is not possible to conclude this issue in the present petition. However, it will be open for the petitioners to make an application to the District Development Officer in this regard. The District Development Officer shall entertain such application and inquire into the allegations made and if it is found that any portion of the area which is shown in any of the open plots is found to have been sold out by respondent Nos.3 to 6, the District Development Officer shall require respondent Nos.3 to 6 to take appropriate corrective measures which may include the payment of compensation and/or providing for sufficiently large open plot. If the petitioners apply within a period of two weeks from today, such application be disposed of as expeditiously as possible and preferably within a period of three months from its receipt.

9. In the conclusion, I find that with the above observations and the directions, the petition is required to be rejected.

10. The petition is rejected. Rule is discharged. Interim relief is vacated. No order as to costs.

11. In view of the order passed in the main matter, this Civil Application is disposed of.

(Akil Kureshi, J)

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